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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,050

08/26/2005

Suhas K. Mehra

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EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/521,050

Applicant(s)

MEHRA ET AL.

Examiner

Helen F. Pratt

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites the limitation ""wherein the starch containing stream" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 17 and 18 is indefinite in that it depends on a cancelled base claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al. (US 2003/0091717 A1) in view of Freeman (3,615,655) and Corn: Chemistry and Technology (Corn).

Porter et al. disclose a process of making a protein food, by extracting oilseeds using a countercurrent method in a screw extruder (0037, 0049). Protein is extracted in the extruder and then transferred to a membrane separation system (0037). Claims 1-3 differ from the reference in using cereal instead of soybeans. Freeman discloses that is known to use an extruder to rupture cereal germ (col. 3, lines 34-50). The reference discloses that a mechanical screw press can be used to release the oil in the soybeans (col. 5, lines 35-44). Freeman discloses that the extruder and mechanical screw press are interchangeable as in col. 3, lines 34-38. Also, it is very well known to process cereal in an extruder with screws as disclosed by Corn (page 360). Therefore, it would have been obvious to process cereal using a screw extruder in the process of Porter in order to extract materials.

Claim 4 further requires extracting with a solvent and claim 5 using water. Porter discloses extracting material with a warm aqueous solution. Aqueous of course is water (0039).

Claim 6 further requires a wetting agent or reducing agent or pH modifier and claim 7 requires an acid and sulphur dioxide and claim 8 requires lactic acid. Freeman discloses that corn germ can be softened by steeping for 2 days in sulfur dioxide

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containing water, then treated with a screw press to release oil. (col. 5, lines 35-45)

Certainly, it would have been practical to do this in an extruder as shown by Porter, if the material would have been further extracted. Lactic acid and other acids are seen to be yet other preservatives, of which it would have been within the skill of the ordinary worker to use for their known function. Therefore, it would have been obvious to use softening and preservative materials with materials that tend to develop unwanted bacteria.

The limitation of treating the cereal material as in claims 9 and 10 for at least 1 to 3 hours is disclosed by the reference to Freeman who treats for 2 days, at warm temperatures as in claim 11 (col. 5, lines 35-45). Therefore, it would have been obvious to treat as shown by Freeman and Corn in the process of Porter et al.

Particular amounts of processing solution as in claim 12 are seen to have been within the skill of the ordinary worker, as is using enough to be absorbed by the cereal material depending on the components being processed as in claim 13.

Certainly, it would have been obvious to use more than one screw transporter as in claim 14, and to comminute as in claim 15, all known processes. Therefore, it would have been obvious to use particular amounts of processing solutions, and enough to be absorbed and to use known apparatus and to comminute in the process of the combined references.

Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to the above claims, and further in view of Muller et al. (4,448,881).

Claim 17 further requires hydrolysis of the starch stream. Muller et al. disclose treating starch with an acid (col. 3, lines 29-62). Therefore, it would have been obvious to hydrolyze a starch stream as disclosed by Muller et al. in the process of the combined references.

As the starch streams have been shown, it would have been obvious to use a starch stream as a fermentation feedstock as in claims 19-21 (col. 3, lines 50-70, col. 4, lines 1-40).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Helen F. Pratt/

Primary Examiner, Art Unit 1794

Hp 2-1-07